SPICER AND OPPENHEIM

v.

JOINT ADMINISTRATORS OF BRITISH COMMONWEALTH HOLDINGS PLC

HOUSE OF LORDS
LORD KEITH OF KINKEL,
LORD ACKNER, LORD JAUNCEY
OF TULLICHETTLE, LORD LOWRY,
LORD SLYNN OF HADLEY
29 OCTOBER 1992

COMPANY LAW: Company insolvent - Appointment of administrators - Application by administrators for production of books, papers and records from auditors • Insolvency Act 1986 s. 236 -Application granted by Registrar - Application to discharge order of Registrar - Whether order was oppressive - Whether requirements of administrator outweigh possible oppression to auditors - Balancing exercise - Whether availability of the order under s. 236 restricted to enable an administrator to get sufficient information to reconstitute the state of knowledge that the company should possess and nothing more.

In September 1988 British and Commonwealth Holdings PLC ("B&C") acquired all the issued share capital in Atlantic Computers PLC ("Atlantic") for £420 million. B&C further provided another £117 million to Atlantic in the following months.

In April 1990 administrators of Atlantic were appointed by the Court. The statement of affairs by the administrators showed a deficiency in Atlantic's assets of some £229 million. In June 1990 administrators (the respondents) were appointed for B&C.

The appellants were the auditors of Atlantic during the time of the acquisition by B&C of Atlantic. They gave an unqualified audit report on the financial statements of Atlantic for the years 1987 & 1988. In the course of the acquisition the appellants produced a working capital report for Atlantic as required by the Stock Exchange rules.

The respondents sought ex parte and obtained from the Registrar an order, pursuant to s. 236(2) Insolvency Act 1986, that the appellants produce all books, papers or other records relating inter alia to the 1987 & 1988 year end audit of Atlantic and having any connection with the acquisition by B&C of Atlantic.

The trial Judge balanced the requirements of the respondents against the oppression to the appellants and stated that if only the balancing act was involved the Registrar's order should stand. The learned Judge nevertheless discharged the order on the grounds that little, if any, of the information sought by the administrators could be described as reconstituting the company's knowledge applying the limitation laid down by the Court of Appeal in ***Cloverbay Ltd. (Joint Administrators) v. Bank of Credit and Commerce International S.A.***

The Court of Appeal restored the order of the Registrar and said that there was no rigid limitation on the exercise of the Court's discretion under s. 236. The auditors appealed against the decision of the Court of Appeal.

Held:

[1] The power of the Court to make an order under s. 236 is not limited to documents which can be said to be needed to reconstitute the state of the Company's knowledge.

[2] Reading the judgment in Cloverbay overall, it was not intended to lay down a limitation to the application of s. 236 to cases of reconstituting the company's knowledge.

[3] The discretionary power must be exercised after a careful balancing of the factors involved, on the one hand the reasonable requirements of the administrator to carry out his task, on the other hand the need to avoid making an order which is wholly unreasonable, unnecessary or opppressive to the person concerned.

[4] No grounds have been shown to justify saying that the trial Judge (in setting out his conclusion on the balancing exercise even though he felt inhibited from giving effect to it) and the majority in the Court of Appeal erred in law in any way which vitiates the exercise of the discretion involved.

[Appeal dismissed].

Cases referred to:

Cloverbay Ltd. (Joint Administrators) v. Bank of Credit and Commerce International S.A. [1991] Ch.90 ***(refd)***

In re Castle New Homes Ltd. [1979] 1 WLR 1075 ***(refd)***

In re Gold Co. [1879] 12 Ch. D. 77 (refd)

In re Imperial Continental Water Corporation [1886] 33 Ch. D. 314, 316 ***(refd)***

In re North Australian Territory Company [1890] 45 Ch.D.87,93 ***(refd)***
In re London and Northern Bank Ltd. [1902] 2 Ch. 73,84 ***(refd)***
In re Rolls Razor (No. 2) [1970] Ch. 576, 592 ***(refd)***
In re Highgrade Trades Ltd. [1984]BCLC151 ***(refd)***
In re v. John T. Rhodes Ltd. [1986]2BCC 99,284,286 ***(refd)***
In re Rolls Razor Ltd. [1968] 3 All ER 698,700 ***(refd)***
In re Esal (Commodities) Ltd. [1989] BCLC 59, 64 ***(refd)***
In re Bletchley Boat Co. Ltd. [1974] I All ER 1225 ***(refd)***

Legislation referred to:
Companies Act 1862, s. 115
Companies Act 1948, ss. 115, 268
Companies Act 1985, s. 561
Insolvency Act 1986, ss. 8(3)(a)(d), 23, 234(1), 236(2)(a)(b)(c), 3

JUDGMENT

Lord Keith of Kinkel

My Lords,

For the reasons given in the speech to be delivered by my noble and learned friend, Lord Slynn of Hadley, which I have had the opportunity of reading in draft and with which I agree, I would dismiss this appeal.

Lord Ackner

My Lords,

I have had the advantage of reading in draft the speech of my noble and learned friend, Lord Slynn of Hadley.

I agree with it and, for the reasons which he has given I too would dismiss the appeal.

Lord Jauncey of Tullichettle

My Lords,

I have had the advantage of reading in draft the speech prepared by my noble and learned friend, Lord Slynn of Hadley. I agree with it and, for the reasons which he has given I too would dismiss the appeal.

Lord Lowry

My Lords,

I have had the advantage of reading in draft the speech of my noble and learned friend, Lord Slynn of Hadley.

a I agree with it and, for the reasons which he has given I too would dismiss the appeal.

Lord Slynn of Hadley

My Lords,

On 1 September 1988 British & Commonwealth *b* Holdings pic ("B&C") acquired all the issued share capital in Atlantic Computers PLC ("Atlantic"), the holding company of a group of companies engaged worldwide in the financing of computer leasing, for a consideration of approximately £420 million. In the ensuing months B&C provided further sums amounting to *c* approximately £117 million for Atlantic.

In April 1990 B&C was told that Atlantic could not continue to trade without massive further support. B&C was unable or unwilling to provide the necessary funds and on 16 April 1990 administrators of Atlantic were appointed by *d* the Court. The statement of affairs annexed to the statement of proposals of the administrators of Atlantic under s. 23 of the Insolvency Act 1986 showed a deficiency in Atlantic's assets of some £279 million.

B&C itself was also now in difficulties and on 3 *e* June 1990 administrators were appointed for B&C. Those administrators are the respondents to this appeal.

The appellants to this appeal were the auditors of Atlantic from 1983 until 2 June 1989. They gave an unqualified audit report on the financial *f* statements of Atlantic for the year ended 31 December 1987 (before the acquisition) and for the year ended 31 December 1988 (that is, in part after the acquisition). In the course of the acquisition the appellants produced a working capital report for Atlantic as required by Stock Exchange rules.

g The respondents, not surprisingly, took the view, as did B&C itself, that serious questions have to be investigated concerning the conduct of Atlantic's business before and after the acquisition and as to the representations made to B&C prior to the acquisition.

h To that end the respondents sought *ex parte*, and obtained, from Mr. Registrar Scott on 29 April 1991, pursuant to s. 236(2) of the Insolvency Act 1986, an order that the appellants produce all books, papers or other records:

i (a) relating to or having any connection with the 1987 year end audit of Atlantic ..., and the

production of the audited accounts for Atlantic ... including any material relating to its subsidiaries;

(b) which relate to or have any connection with the acquisition by [B&C] of Atlantic... including but not limited to the working capital review conducted by [the appellants] and the production of a working capital letter;

(c) which relate to or have any connection with the 1988 year end audit of Atlantic... and the production of the audited accounts for Atlantic ... including any material relating to its subsidiaries.

Section 236 appears in Part VI of the Insolvency Act 1986 which is headed "Miscellaneous Provisions applying to companies which are insolvent or are in liquidation" and under the sub-heading "Management by administrators, liquidators, etc.". The section applies, *inter alia*, where an administration order is made in relation to the company; the administrator so appointed is an "office holder" within the meaning of s. 236. (Section 236 read with s. 234(1)).

By sub-section (2) of s. 236:

The court may, on the application of the office-holder, summon to appear before it -

(a) any officer of the company,
(b) any person known or suspected to have in his possession any property of the company or supposed to be indebted to the company, or
(c) any person whom the court thinks capable of giving information concerning the promotion, formation, business, dealings, affairs or property of the company.

and by sub-section (3) the court may require any such person as is mentioned in sub-section (2)(a) to (c) to produce any of the documents in his possession or under his control relating to the company or the matters mentioned in sub-section (2)(c).

The appellants applied to discharge the Registrar's order on the ground,

1. that it was in all the circumstances oppressive and
2. that it amounted to the use of s. 236(2) for a purpose not intended by Parliament.

Hoffmann J., [1991] BCC 658 in his judgment on the hearing of the motion, referred to what had been said by Sir Nicholas Browne-Wilkinson VC sitting in the Court of Appeal in *Cloverbay Ltd. (Joint Administrators) v. Bank of Credit and Commerce International S.A.* [1991] Ch. 90,102, as to the task of the court on such an application. It was for the court to:

> balance the requirements of the liquidator against any possible oppression to the person to be examined. Such balancing depends upon the relationship between the importance to the liquidator of obtaining the information, on the one hand, and the degree of oppression to the person sought to be examined on the other.

In carrying out the balancing exercise Hoffmann J. set out on the one hand the enormous losses caused to a listed public company, the interests of the creditors of B&C, the public interest in having the whole matter investigated and the need of the administrators to find out the true financial position of the company and the truth of the representations made concerning it. On the other hand he referred to the claim of the appellants that the volume of documentation was very large and that if in all such cases a similar order was made there would be "intolerable disruption" to an auditors' business, the risk to the appellants that in producing the documents they might provide material to ground claims against themselves, and the suggestion that the order was not sufficiently specific in that it did not indicate to the appellants the areas in which the respondents considered that the appellants or others might be liable.

Having weighed these factors the Judge had no doubt that "[the appellants'] ordered documents may show not only what inquiries the appellants made or did not make in the performance of their duties as auditors, but what they were told and by whom", and that if only the balancing act was involved the Registrar's order should stand.

He considered [1991] BCC 658, 662, however, that in Cloverbay the Vice Chancellor (with whom Nourse LJ in the result agreed) had restricted the availability of an order under s. 236 to enable a liquidator or an administrator "to get sufficient information to reconstitute the state of knowledge that the company should possess". In the judgment of the Vice Chancellor, "its purpose is not to put the company in a better position than it would have enjoyed if liquidation or administration had not supervened." ([1991] Ch. 90, 102D-E). Hoffmann J. read this limitation as referring to information "to which the company was entitled from its officers and servants, past or present, as a matter of contract or fiduciary duty".

In the light of what he read to be the limitation laid down by the Court of Appeal, the Judge concluded that "little, if any, of the information sought by the administrators can be described as 'reconstituting the company's knowledge'. He accordingly discharged the Registrar's order although it seems plain that, but for the decision in *Cloverbay* [1991] Ch. 90, and on the basis of earlier authorities he would have upheld it.

The case proceeded before Hoffmann J. on the basis that, in accordance with the existing practice, the appellants were not entitled to see the administrators' confidential statement which was before the Judge. On an appeal to the Court of Appeal it was held that this statement should be produced subject to certain names and passages being omitted.

The Court of Appeal (Ralph Gibson and Woolf L.JJ) (Nourse LJ dissenting), [1991] 2 WLR 931 allowed the appeal and restored the order of the Registrar.

Nourse LJ did not accept that the Vice Chancellor had intended to lay down a rigid limitation on the exercise of the Court's discretion. In his view (pp. 944-945), however, the decision in *Cloverbay* obliged the Court of Appeal to adopt the following approach as being correct for the Court on an application under s. 236:

> The discretion must be exercised with a recognition that the primary purpose of s. 236 is to enable office-holders to obtain the information which would have been obtainable by the company as a going concern. The convenient course is to inquire,
>
> 1. whether on that approach, the registrar's order is oppressive to [the appellants];
> 2. whether the documents required by the administrators are reasonably required for the discharge of their duties and, if so, whether their requirements outweigh any oppression to [the appellants].

On that approach Nourse LJ considered that the claim was oppressive. The number of documents was vast. A claim was made against a firm of accountants who were never the auditors of B&C and the order was sought so that unspecified claims could be investigated. There was in his view no evidence to show that the documents were reasonably required by the administrators for the discharge of their duties.

Ralph Gibson LJ did not accept that the Vice-Chancellor in *Cloverbay* had intended to lay down a rule that no order could be made under s. 236 if the purpose for which the office-holder claimed reasonably to require information sought included obtaining information the receipt of which would go beyond a reconstitution of knowledge which the company once had and was entitled in law to possess. That the information sought had been in the knowledge of the company, particularly if sought from an officer of the company, added weight to the applicant's case on the balancing exercise. Such a limitation could not, however, be derived from the section in authority. The Court had to weigh up all the circumstances in each case in order to decide whether an order for production should be made.

After a careful and detailed consideration of all the factors relied on by the respondents and by the appellants, Ralph Gibson LJ concluded, at p. 966, that the order in the present case was not oppressive:

> The decisive factor on this issue, oppression, in my view is that all such burdens upon [the appellants] in complying with the order are plainly and comprehensively outweighed by the reasonable requirements of the administrators upon the facts of this case to have access to the documents listed in the order.

Woolf LJ also considered (p. 972) that in *Cloverbay* the Vice-Chancellor had not identified "a watertight limit to the jurisdiction of the Court to make an order under s. 236", and that the Court had a general discretion which should be exercised by balancing the needs of the administrators against the disadvantages accruing to the other party which can result from the making of the order. Although having doubts as to the width of the order Woolf LJ concluded with Ralph Gibson LJ that the order was in the circumstances of this case properly made by the Registrar.

The first question on this appeal is whether the useof s. 236 is limited in the way which Hoffmann J. considered had been laid down by the Court of Appeal in *Cloverbay* [1991] Ch. 90.

It is, however, by no means certain that such a limitation was intended to be introduced by the Court of Appeal. It is true that on the one hand the Vice Chancellor defined the purposeofs. 236 in terms which suggest such a limitation, as Hoffmann J. thought, *viz.*

> The purpose of s. 236 is to enable [the administrators] to get sufficient information to reconstitute the state of knowledge that the company should possess. In my judgment its

> purpose is not to put the company in a better position than it would have enjoyed if liquidation or administration had not supervened. (p. 102 D-E.)

and again, at p. 104 E-F the Vice Chancellor alluded to the same idea:

> The administrators are seeking to use the statutory procedure to get information which the company, if solvent, would not have been able to obtain before deciding whether or not to pursue the proceedings against BCCI.

On the other hand both the Vice Chancellor and Nourse LJ emphasised the importance of the balancing exercise. They both rejected the practice which had grown up since the decision of Slade J. in In r*e Castle New Homes Ltd. [1979]* 1WLR 1075, whereby if the liquidator had sued or decided to sue he was refused that order; if he had not done so but was seeking information to enable him to sue he was granted an order. Moreover, the Vice Chancellor expressly agreed with much of the judgment of Slade J.:

> ... in particular with the basic proposition that the exercise of the discretion involves the balancing of the requirements of the liquidator or administrator to obtain information on the one hand against the possible oppression to the person sought to be examined on the other. (p. 99B).

Again, having rejected the "rule of thumb" test, the Vice Chancellor said, at p. 102:

> Nor do I think that there is any other simple test that can be substituted. The words of the Insolvency Act 1986 do not fetter the court's discretion in any way. Circumstances may vary infinitely. It is clear that in exercising the discretion the court has to balance the requirements of the liquidator against any possible oppression to the person to be examined. Such balancing depend son the relationship between the importance to the liquidator of obtaining the information on the one hand and the degree of oppression to the person sought to be examined on the other.

He then listed a number of points which "should be borne in mind in exercising the discretion". The first was the "purpose" to which I have referred. Others were that "need" as opposed to "reasonable requirement" did not have to be shown, that the case for making an order against an officer of the company was stronger than it would be against a third party, that an order for oral examination (as in Cloverbay itself) was likely to be more oppressive than an order for the production of documents. The Vice Chancellor then carried out the balancing exercise, with the result of which Nourse LJ concurred.

Although the passages to which I first referred support the conclusion reached by Hoffmann J. as to the effect of the judgment of the Court of Appeal, I do not think that reading the judgment overall such a limitation to "reconstituting the company's knowledge" was intended to be laid down in *Cloverbay.*

In any event for my part I do not think that such a limitation exists.

The wording of the section contains no express limitation to documents which can be said to be part of a process of reconstituting the company's state of knowledge. The words are quite general. Thus s. 236(2)(c) refers to "any person whom the Court thinks capable of giving information concerning the promotion, formation, business, dealings, affairs or property of the company", and by subsection (3) such a person may be ordered to produce "any books, papers or other records in its possession or under his control relating to a company or the matters mentioned in paragraph (c) of the subsection".

Nor do I see any support in earlier judgments which have been cited to us relating to the predecessors of s. 236 or to comparable sections for such a limitation to "reconstituting the company's knowledge". On the contrary, for example, in In re Gold Co. [1879] 12 Ch. D. 77 in a case under s. 115 of the Companies Act 1862 (which enabled the Court to summon any officer or any persons supposed to be capable of giving information concerning the transaction and trade dealings of the company,) Sir George Jessel MR said, at p. 85:

> ... the whole object of the section is to assimilate the practice in winding up to the practice in bankruptcy, which was established in order to enable assignees, who are now called trustees, in bankruptcy to find out facts before they brought an action, so as to avoid incurring the expense of some hundreds of pounds in bringing an unsuccessful action, when they might, by examining a witness or two, have discovered at a trifling expense that an action could not succeed.

Similarly, Chitty J. in *In re Imperial Continental Water Corpn.* [1886] 33 Ch. D. 314,316 said:

> Those extensive powers are conferred upon the court for the beneficial winding up of the company, for sometimes it happens that the

liquidator is unable to obtain from unwilling persons the information which he requires.

In *ln re North Australian Territory Co.* [1890] 45 Ch. D. 87, in relation to the same section Bowen LJ said, at p. 92:

> The section which the court is putting in force in the examination of a person under such circumstances is the section which places the decision as to an examination and as to its limits within the discretion of the Court. That being so, I do not think that we ought to attempt beforehand to classify all the occasions on which it may be proper to make such an order ...

In *In re London and Northern Bank Ltd.* [1902] 2 Ch. 73, 84 Cozens Hardy LJ recognised the discretionary nature of the Court's powers under s. 115 of the Companies Act 1862. In *In re Rolls Razor* (No. 2) [1970] Ch. 576,592, Megarry J. referred to "the unfettered discretion of the Judge brought to bear upon any exercise of this extraordinary jurisdiction" under s. 268 of the Companies Act 1948 which replaced s. 115 of the 1862 Act. In *In re Highgrade Trades Ltd.* [1984] BCLC 151, Oliver LJ in relation to s. 268 said, at p. 177C "the jurisdiction is a most useful one, and I certainly do not wish to say, and it is unnecessary to say, anything which would limit its scope". In *In re v. John T. Rhodes Ltd.* [1986] 2 BCC 99, 284, 286, Hoffmann J. again emphasised the discretionary nature of an order made under s. 561 of the Companies Act 1985, the successor of s. 268 of the Act of 1948.

In my opinion, although there may be some difference in the wording of these sections, the position under s. 236 of the Insolvency Act 1986 is broadly the same as that under s. 268 of the Companies Act 1948 as explained by Buckley J. In *In re Rolls Razor Ltd.* [1968] 3 A11ER 698,700, in a passage subsequently approved by the Court of Appeal in *In re Esal (Commodities) Ltd.* [1989] BCLC 59, 64:

> The powers conferred by s. 268 are powers directed to enabling the court to help a liquidator to discover the truth of the circumstances connection with the affairs of the company, information of trading, dealings, and so forth, in order that the liquidator may be able, as effectively as possible, and, I think, with as little expense as possible ... to complete his function as liquidator, to put the affairs of the company in order and to carry out the liquidation in all its various aspects, including, of course, the getting in of any assets of the company available in the liquidation.
>
> It is, therefore, appropriate for the liquidator, when he thinks that he may be under a duty to try to recover something from some officer or employee of a company, or some other person who is, in some way, concerned with the company's affairs, to be able to discover, with as little expense as possible and with as much ease as possible, the facts surrounding any such possible claim.

These words, which reflect what was said by Jessel MR in 1879 seem to be wholly consistent not just with the wording of s. 236 but also with the purposes of the administration as set out in s. 8(3) of the Act of 1986 and in particular:

> (a) The survival of the company, and the whole or any part of its undertaking, as a going concern...
> (d) a more advantageous realisation of the company's assets than would be effected in a winding-up.

As Megarry J. said in *In re Rolls Razor* (No. 2) [1970] Ch. 576, 591-592:

> The process under s. 268 is needed because of the difficulty in which the liquidator in an insolvent company is necessarily placed. He usually comes as a stranger to the affairs of a company which has sunk to its financial doom. In that process, it may well be that some of those concerned in the management of the company, and others as well, have been guilty of some misconduct or impropriety which is of relevance to the liquidation. Even those who are wholly innocent of any wrongdoing may have motives for concealing what was done. In any case, there are almost certain to be many transactions which are difficult to discover or to understand merely from the books and papers of the company. Accordingly, the legislature has provided this extraordinary process so as to enable the requisite information to be obtained. The examinees are not in any ordinary sense witnesses, and the ordinary standards of procedure do not apply. There is here an extraordinary and secret mode of obtaining information necessary for the proper conduct of the winding up. The process, borrowed from the law of bankruptcy, can only be described as being *sui generis.*

I am therefore of the opinion that the power of the Court to make an order under s. 236 is not limited to documents which can be said to be needed "to reconstitute the state of the company's knowledge" even if that may be one of the purposes most clearly justifying the making of an order.

At the same time it is plain that this is an extraordinary power and that the discretion

must be exercised after a careful balancing of the factors involved - on the one hand the reasonable requirements of the administrator to carry out his task, on the other the need to avoid making an order which is wholly unreasonable, unnecessary or "oppressive" to the person concerned. The latter was stressed by Bowen LJ in In re North Australia Territory Co. 45 Ch. D. 87, 93:

> That is an inquisitorial power, which may work with great severity against third persons, and it seems to me to be obvious that such a section ought to be used with the greatest care, so as not unnecessarily to put in motion the machinery of justice when it is not wanted, or to put it in motion at a stage when it is not clear that it is wanted, and certainly not to put it in motion if unnecessary mischief is going to be done or hardship inflicted upon the third person who is called upon to appear and give information.

Such an approach was stressed more recently by Brightman J. in respect of oral examination in In *re Bletchley Boat Co. Ltd.* [1974] 1 All ER 1225.

The protection for the person called upon to produce documents lies, thus, not in a limitation by category of documents ("reconstituting the company's state of knowledge") but in the fact that the applicant must satisfy the Court that, after balancing all the relevant factors, there is a proper case for such an order to be made. The proper case is one where the administrator reasonably requires to see the documents to carry out his functions and the production does not impose an unnecessary and unreasonable burden on the person required to produce them in the light of the administrator's requirements. An application is not necessarily unreasonable because it is inconvenient for the addressee of the application or causes him a lot of work or may make him vulnerable to future claims, or is addressed to a person who is not an officer or employee of or a contractor with the company in administration, but all these will be relevant factors, together no doubt with many others.

It is plain in the present case that Hoffmann J. carried out the balancing exercise on the basis that he was entitled and bound to do so, and leaving aside the limitation on his powers which he subsequently felt that he had to observe. It seems to me that it is impossible to say that in carrying out that exercise he misdirected himself or came to a conclusion to which he could not reasonably have come in the exercise of his discretion. He followed the lines indicated by the Vice Chancellor as to the exercise of the discretion and he balanced the various factors involved, reaching the conclusion on that basis that "I would have no doubt that the Registrar's order should stand". The same result was reached after an independent exercise of discretion by Ralph Gibson LJ following a careful and detailed investigation of the factors relied on by the appellants and with that conclusion Woolf LJ, despite initial reservations as to the width of the order, agreed.

It seems to me that no grounds have been shown to justify your Lordships saying that Hoffmann J. (in setting out his conclusion on the balancing exercise even though he felt inhibited from giving effect to it) and the majority in the Court of Appeal erred in law in a way which vitiates the exercise of the discretion involved. I would dismiss the appeal on that ground.

Since Nourse LJ reached a different conclusion on this point I will comment briefly on criticisms of the order which has been made. In the first place it is to be accepted that it is made in wide terms though it is not said that they are so imprecise that there is a doubt as to what is covered by the order.

Secondly the order relates to the audit before and after acquisition. In my view, when the truth of representations is being considered, no objection can be taken to the request relating to the first audit, nor to the second audit since the latter may well reveal material relevant to the conduct of the company's business before acquisition and after acquisition in a way which reflects on the earlier conduct of the business. The material involved may go to show how accurate were the company's financial statements and how accurate were any representations made. It is not possible to say that the material as to the second audit must be irrelevant.

Thirdly, the order relates to the working papers of the auditors of Atlantic and not simply to Atlantic itself but these papers could clearly contain information of relevance to the administrator's investigation even if that information could not have been obtained in litigation against Atlantic.

Fourthly, the appellants were never auditors of B&C. That does not seem to me in any sense to

be conclusive since the inquiry is into the affairs of Atlantic of which the appellants were auditors and as to representations made about it before acquisition.

Sixthly, although a Court may hesitate to order production by those not officers of the company whose administrators apply for the documents, there is no embargo in principle against ordering "third parties" to produce documents. In this case the process of the acquisition by B&C of Atlantic shares created a close relationship between them of which the auditors were well aware.

Next, it is said that the volume of documents is very large. That is a factor but it is not exclusive against the order. I assume that every effort will be made to ease the task by mutual cooperation of the solicitors and accountants concerned in order to carry out the Court's order.

Next I am not satisfied that the carrying out of the Registrar's order, though extensive and highly inconvenient for the appellants, will create such a precedent that a flood of such orders will follow which would disrupt the business of major auditing firms in the City who carry out these administrations.

That papers may be produced which could possibly lay the appellants open to further claims (as to which I know nothing) is a factor to take into account but it is only one factor to be balanced against the administrator's reasonable requirements.

The fact that the company never had and was never entitled to have some of the documents and that certain of them could only be obtained by litigation with the appellants, in so far as they were relevant to issues in that litigation, are factors to take into account in the balancing exercise to be set against the purposes of the administration set out in s. 8 of the Act of 1986.

This may well be an exceptional order. The size of the financial crash, however, gives rise to an exceptional case. Creditors and investors stood to lose vast sums. It was the respondents' task to investigate "what was the true financial position of Atlantic at the time of its acquisition and if it was different from the way it was represented, how and why the truth was concealed". (Hoffmann J.). They need in this very complex situation to check the accuracy of the various financial documents and to know not only what representations were made but how accurate they were. Like Woolf LJ, I find it difficult to see how the order can be cut down and remain effective. No way has been suggested to achieve this.

Accordingly, despite the width of the order and recognising that this is an exceptional case, I would dismiss this appeal.